



General Assembly

January Session, 2011

Amendment

LCO No. 7298

HB0648707298HD0

Offered by:

REP. FOX, 146th Dist.

SEN. COLEMAN, 2nd Dist.

SEN. DOYLE, 9th Dist.

REP. HOLDER-WINFIELD, 94th Dist.

SEN. MCKINNEY, 28th Dist.

REP. KLARIDES, 114th Dist.

REP. ROWE, 123rd Dist.

REP. HEWETT, 39th Dist.

To: Subst. House Bill No. 6487

File No. 552

Cal. No. 337

"AN ACT CONCERNING CERTIFICATES OF MERIT."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 52-190a of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective from passage and*
5 *applicable to causes of action pending on or accruing on or after said date*):

6 (a) (1) No civil action or apportionment complaint shall be filed to
7 recover damages resulting from personal injury or wrongful death
8 occurring on or after October 1, 1987, whether in tort or in contract, in
9 which it is alleged that such injury or death resulted from the
10 negligence of a health care provider, unless the attorney or party filing
11 the action or apportionment complaint has made a reasonable inquiry
12 as permitted by the circumstances to determine that there are grounds

13 for a good faith belief that there has been negligence in the care or
14 treatment of the claimant. The complaint, initial pleading or
15 apportionment complaint shall contain a certificate of the attorney or
16 party filing the action or apportionment complaint that such
17 reasonable inquiry gave rise to a good faith belief that grounds exist
18 for an action against each named defendant or for an apportionment
19 complaint against each named apportionment defendant. To show the
20 existence of such good faith, the claimant or the claimant's attorney,
21 and any apportionment complainant or the apportionment
22 complainant's attorney, shall obtain a written and signed opinion of a
23 [similar] qualified health care provider, as defined in [section 52-184c,
24 which similar health care provider shall be selected pursuant to the
25 provisions of said section] subsection (d) of this section, that there
26 appears to be evidence of medical negligence and [includes a detailed
27 basis for the formation of such opinion] which states one or more
28 specific breaches of the prevailing professional standard of care.

29 (2) Such written opinion shall not be subject to discovery by any
30 party except for questioning the validity of the certificate. The claimant
31 or the claimant's attorney, and any apportionment complainant or
32 apportionment complainant's attorney, shall retain the original written
33 opinion and shall attach a copy of such written opinion, with the name
34 and signature of the [similar] qualified health care provider expunged,
35 to such certificate. The [similar] qualified health care provider who
36 provides such written opinion shall not, without a showing of malice,
37 be personally liable for any damages to the defendant health care
38 provider by reason of having provided such written opinion.

39 (3) In addition to such written opinion, the court may consider other
40 factors with regard to the existence of good faith.

41 (4) If the court determines, after the completion of discovery, that
42 such certificate was not made in good faith and that no justiciable issue
43 was presented against a health care provider that fully cooperated in
44 providing informal discovery, the court upon motion or upon its own
45 initiative shall impose upon the person who signed such certificate or a

46 represented party, or both, an appropriate sanction which may include
 47 an order to pay to the other party or parties the amount of the
 48 reasonable expenses incurred because of the filing of the pleading,
 49 motion or other paper, including a reasonable attorney's fee. The court
 50 may also submit the matter to the appropriate authority for
 51 disciplinary review of the attorney if the claimant's attorney or the
 52 apportionment complainant's attorney submitted the certificate.

53 (b) Upon petition to the clerk of the court where the civil action will
 54 be filed to recover damages resulting from personal injury or wrongful
 55 death, an automatic ninety-day extension of the statute of limitations
 56 shall be granted to allow the reasonable inquiry required by subsection
 57 (a) of this section. This period shall be in addition to other tolling
 58 periods.

59 (c) The failure to obtain and file the written opinion required by
 60 subsection (a) of this section shall be grounds for the dismissal of the
 61 action, except that no such action may be dismissed for the failure to
 62 obtain and file such written opinion, unless the claimant has failed to
 63 attach a copy of such written opinion to such certificate pursuant to
 64 subdivision (2) of subsection (a) of this section, or has failed to remedy
 65 such failure within sixty days after being ordered to do so by the court.

66 (d) For the purposes of this section, "qualified health care provider"
 67 means a similar health care provider, as defined in subsection (b) or (c)
 68 of section 52-184c, or any other health care provider who may testify as
 69 an expert pursuant to subsection (d) of section 52-184c."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to causes of action pending on or accruing on or after said date</i>	52-190a